



**STATE OF NEVADA
COMMISSION ON ETHICS**

<http://ethics.state.nv.us>

**Thursday, June 12, 2003
9:30 a.m.
Truckee Meadows Community College
Meadowood Center
5270 Neil Rd., Room S-104
Reno, Nevada**

and, via videoconference:

**University of Nevada, Las Vegas
Lied Library, Eureka Room
4505 Marilyn Parkway
Las Vegas, Nevada**

MINUTES

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics.
A verbatim transcript of the open session proceedings, prepared by a certified court reporter,
is available for inspection at the Commission office.

Commission Members Present:

Todd Russell, Esq., Chairman; Jim Kosinski, Esq.;
Rick Hsu, Esq.; Thomas R. Sheets, Esq.; Caren Jenkins, Esq.;
and William Flangas, P.E. via telephone

Commission Members Absent:

Lizzie R. Hatcher, Esq.; Merle Berman

Commission on Ethics Staff Present:

Stacy M. Jennings, Executive Director; Nancy Lee Varnum, Commission Counsel;
Beverly L. Amundson, Administrative Assistant

Chairman Todd Russell called the meeting to order at 9:30 a.m., Thursday, June 12, 2003.

Agenda Item 1 – Request for Advisory Opinion 03-05

The public officer requesting Advisory Opinion No. 03-05, Gregory A. Hoefer, member, Nevada Commission on Appraisers of Real Estate, waived confidentiality and this agenda item was conducted in open session. Pursuant to NRS 281.511, Subsection 5 the Commission heard

testimony, received evidence, deliberated, and rendered an opinion relating to an Advisory Opinion Request submitted pursuant to NRS 281.511, Subsection 1.

A motion was made by Commissioner Sheets and seconded by Commissioner Kosinski that Mr. Hoefer has no commitment in the private capacity of the interest of another that would disqualify him in performing his duties as a member of the Commission of the Appraisers of Real Estate. The motion was put to a vote and passed unanimously.

Commissioner Kosinski advised that disclosure should be made in all cases where his former wife was involved.

Agenda Item 2 – Executive Director’s Report on the Status of 2003 Annual Financial Disclosure Statements Filed with the Commission Pursuant to NRS 281.

In open session, the Executive Director reported on the status of 2003 annual financial disclosure statements filed by public officers who had failed to file a financial disclosure statement pursuant to NRS 281.561.

Chairman Russell recommended handling each group individually.

Group 1 – Individuals who had not responded to the civil penalty notices mailed April 25, 2003.

<u>Name</u>	<u>Calculated Civil Penalty</u>	<u>Civil Penalty Imposed</u>
Douglas Bremner	175	25
Michael Miera	25	25
Peter Thomas	525	50
Richard Harjo	300	50
Frances Enus	25	25
Joseph Johnson	75	25
Ann Lynch	425	50
Neil Wright	525	50

A motion was made by Commissioner Kosinski and seconded by Commissioner Hsu to assess civil penalties in accordance with the changes in SB 147. The motion was put to a vote and passed unanimously.

Group 2 – Individuals who had paid civil penalties according to the notices mailed April 25, 2003.

<u>Name</u>	Calculated Civil <u>Penalty</u>	Civil Penalty <u>Imposed</u>	Amount to be <u>Refunded</u>
Rodha Chanderrgi	1250	100	1,150
Gloria Alexander	25	25	0
Bill Bradley	225	25	200
Randall Capurro	225	25	200
James Chavis	50	25	25
Lura Duvall	25	25	0
Charles Fulkerson	175	25	150
James Galloway	50	25	25
John Gwaltney	175	25	150
Curtis Jordan	75	25	50
Joel N. Lubritz	75	25	50
Geno Martini	225	25	200
Senator Mike McGinness	25	25	0
Earl Mitchell	100	25	75
Mike Nannini	275	25	250
Senator Dennis Nolan	25	25	0
Ceasar E. Salicchi	100	25	75
Senator Maurice Washington	25	25	0
Bill Young	275	25	250
Kathryn Craven	100	25	75

A motion was made by Commissioner Sheets and seconded by Commissioner Kosinski to assess civil penalties in accordance with the changes in SB 147 and refund the difference between that amount and what was paid. The motion was put to a vote and passed unanimously.

Group 3 – Individuals requesting waiver or reduction based on the civil penalty notices mailed April 25, 2003.

<u>Name</u>	Calculated Civil <u>Penalty</u>	Civil Penalty <u>Imposed</u>
Chet Adams	2075	250
Merv Iverson	800	250
John Brailsford	400	100
Carlos Esparza	1175	100
Lon Itson	1000	100
Clara Andriola	320	50
David Neil Austin	320	50
Jacob Bingham	375	50
Catherine Boeddeker	375	50
Barbara Curti	120	50

Hector Gonzalez	320	50
Jackie Crawford Marsing	975	50
P. Phillip Miller	525	50
Jerry Reeves	320	50
Tommy Rowe	325	50
John Seymour	775	50
Kevin Wadlow	525	50
Rick Wilkening	325	50
Joe Aguirre	225	25
Hy Forgeron	175	25
Johnanna Fricke	275	25
Charles Horsey	175	25
Timothy Jones	225	25
Virginia Lewis	175	25
L. D. Lovett	75	25
William Schaeffer	100	25
Gene Sullivan	175	25
Idonna Trevino	225	25
Ron Unger	175	25
Gary Woodbury	225	25

A motion was made by Commissioner Flangas and seconded by Commissioner Hsu to assess civil penalties in accordance with the changes in SB 147. The motion was put to a vote and passed unanimously.

Group 4 – Requests for Waiver or Reduction based on medical, death, and a house fire.

A motion was made by Commissioner Sheets and seconded by Commissioner Flangas to reduce the civil penalty of John Dean Baker to \$25 based on his request for waiver or reduction because of medical reasons. The motion was put to a vote and passed unanimously.

A motion was made by Chairman Russell and seconded by Commissioner Sheets to deny the request for waiver by Jo Anna Wesley-Winn based on a medical claim and to assess the civil penalty at \$250 in accordance with the changes in SB 147. The motion was put to a vote and passed 5-1; Commissioner Hsu opposed.

A motion was made by Commissioner Hsu and seconded by Commissioner Sheets to waive the civil penalty of Susan Brager based on her request for waiver or reduction because of a death in the family and other family medical reasons. The motion was put to a vote and passed 4-2; Commissioners Kosinski and Jenkins opposed.

A motion was made by Commissioner Flangas and seconded by Commissioner Kosinski to waive the civil penalty of John Haycock based on his request for waiver or reduction because of a fire at his residence. The motion was put to a vote and passed unanimously.

A motion was made by Commissioner Sheets and seconded by Commissioner Jenkins to deny the request for waiver by Dee Hicks based on a family illness and travel and to assess the civil penalty at \$50 in accordance with the changes in SB 147. The motion was put to a vote and passed unanimously.

A motion was made by Chairman Russell seconded by Commissioner Sheets to deny the request for waiver by Kurt Kramer based on illness and to assess the civil penalty at \$50 in accordance with the changes in SB 147. The motion was put to a vote and passed unanimously.

A motion was made by Chairman Russell and seconded by Commissioner Jenkins to waive the civil penalty of Horacio Lopez based on his request for waiver or reduction because of a family death. The motion was put to a vote and passed unanimously.

A motion was made by Commissioner Sheets and seconded by Commissioner Flangas to waive the civil penalty of Lee Gurr based on his request for waiver or reduction because of illness and a family death. The motion was put to a vote and passed 5-1; Commissioner Kosinski opposed.

A motion was made by Commissioner Hsu and seconded by Commissioner Flangas to waive the civil penalty of Gloria Hughes based on her request for waiver or reduction because of deaths and other family circumstances. The motion was put to a vote and passed 5-1; Commissioner Sheets opposed.

The result of the motions under Group 4 was:

<u>Name</u>	<u>Calculated Civil Penalty</u>	<u>Civil Penalty Imposed</u>
John Dean Baker	75	25
Jo Anna Wesley-Winn	320	250
Susan Brager	1475	Waived
John Haycock	320	Waived
Dee Hicks	375	50
Kurt Kramer	320	50
Horacio Lopez	775	Waived
Lee Gurr	75	Waived
Gloria Hughes	175	Waived

Agenda Item 3 – Executive Director’s report on the status of bills passed by the 2003 Legislature and FY2005 operating budget request.

In open session the Executive Director reported on the status of legislation in the 2003 legislative session (see Exhibit A).

In open session the Executive Director reported that the Commission budget had passed at Governor-recommended levels, plus an additional \$15,000 per year allocated specifically for

Investigations and Paralegal Services. When reviewing the Commission on Ethics budget, the 2003 Nevada Legislature determined the majority of the Commission's request for opinion caseload (65 percent) was originating from the city and county level of government. Therefore, the Assembly and Senate passed Assembly Bill 551 (Chapter 440, attached) to provide that local government share in funding the Commission's budget. AB 551 was enacted by Governor Guinn on June 10, 2003, and becomes effective July 1, 2003. AB 551 provides for a local government cost-share of the NCOE budget by specifying that cities and counties with more than 10,000 in population are required to proportionally share in the NCOE funding. The NCOE is responsible for billing cities and counties on August 1 and February 1 of each year of the biennium. If a city or county fails to pay the assessment, the Commission's Executive Director is authorized to submit a billing claim to the Department of Taxation, and the Department of Taxation is authorized to deduct the funds from that city or county's share of the Local Government Tax Distribution Account.

The NCOE is directed to consult with the Budget Division and the Legislative Counsel Bureau Fiscal Division to determine the local government cost share of the agency budget for each biennium. The cost share will be based on the source of the NCOE request for opinion caseload from the previous biennium. Thus, if over the next two years only 50 percent of the NCOE caseload originates from local government, then only 50 percent of the NCOE budget would be assessed to local government. Funds collected from local governments will be deposited into the State General Fund for credit to the budget account of the NCOE. The funds collected from local government are restricted for the enforcement of the ethics in government law, and do not revert to the General Fund at the end of any fiscal year.

Agenda Item 4 – Approve the Minutes of the May 8, 2003

In open session, the Commission discussed the minutes of the May 8, 2003 Commission meeting. A motion was made by Commissioner Koskinski and seconded by Commissioner Hsu to approve the minutes. The motion was put to a vote and passed by a majority; Commissioners Sheets and Jenkins and abstained.

Agenda Item 5 – Public Comment

No public comment was made.

Chairman Russell adjourned the meeting at 10:54 a.m.

Minutes transcribed by:

Minutes approved July 10, 2003.

_____/s/_____
Beverly L. Amundson
Administrative Assistant

_____/s/_____
Todd Russell, Esq.
Chairman



Stacy M. Jennings, MPA
Executive Director

Nancy Lee Varnum, Esq.
Commission Counsel

State of Nevada
COMMISSION ON ETHICS

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Todd Russell, Esq.
Chairman
William Flangas, P.E.
Vice Chairman

Members:
Merle Berman
Lizzie R. Hatcher, Esq.
Rick R. Hsu, Esq.
Caren Jenkins, Esq.
James Kosinski, Esq.
Thomas R. Sheets, Esq.

June, 2003

***Summary of 2003 Legislative Changes to
Nevada Ethics in Government Law***

Senate Bill 147

Senate Bill 147 was effective June 11, 2003. SB 147 was introduced by the NCOE.

SB 147 provides information to update and maintain databases for public officers and candidates for public office, for the purpose of enforcing statutory requirements to file a financial disclosure statement. It adds a new section requiring electronic submission of public officer lists annually by December 1 to the NCOE and the Secretary of State by city clerks, county clerks, the budget director (for the executive branch), and the director of the Legislative Counsel Bureau (for the legislative branch). It adds a similar requirement for candidates for public office required to file financial disclosure statements. The candidate lists must be supplied electronically not later than 10 days after the filing deadline for public office. The electronic format for both submissions must be in a format specified by the NCOE.

NRS 281.4635(1)(e) formerly required the Commission to collect costs associated with ethics in government training conducted by the Executive Director. The bill now allows the flexibility to provide training at low or no cost, by changing "shall" to "may."

The bill requires first-party and third-party opinion requests to be submitted on a form prescribed by the Commission, and deletes language which requires persons submitting a third-party opinion request (ethics complaint) to sign a statement which affirms the information submitted is true and it is not submitted with a vexatious purpose. This language was declared unconstitutional on its face and enforcement was permanently enjoined by U.S. District Court. The bill also deletes language allowing the Commission to assess a civil penalty of up to \$5,000 for a person who submits a third-party opinion request in bad faith or with a vexatious purpose, and also deletes language guiding the Commission in making a determination as to bad faith or vexatious purpose. The statutes had been declared facially unconstitutional and enforcement was

permanently enjoined by U.S. District Court. Similarly, the bill repeals NRS 281.437 and NRS 281.525.

The bill extends statutory timeframes for third-party opinion requests (ethics complaints) to give public officers more time to respond to complaints filed against them, and to provide the Commission with more time to fully investigate complaints. The amount of time allotted for investigation of a complaint is extended from 15 days to 45 days. A public officer will now be allowed to waive statutory timeframes set forth for investigations, panel meetings, and public hearings, and the failure of a public officer to comply with a written request for records shall be deemed a waiver of the timeframes set forth for processing third-party opinion requests.

Nevada District Court found the existing phrase “any other person” as used in NRS 281.481(2) “unconstitutionally vague,” rendering it virtually unenforceable. The provisions of NRS 281.481(2) now prohibit a public officer or employee from using his public position to benefit himself or any person to whom he has a commitment in a private capacity, as that phrase is defined in NRS 281.501(7) [see page 11, lines 14-23 of the bill].

The bill transfers to the Secretary of State the responsibility to accept the financial disclosure statement filings of elected public officers and candidates for public office, as well as the acknowledgment of statutory ethical standards. The annual filing date for financial disclosure statements is moved to January 15 to be consistent with campaign contribution and expenditure filings. The NCOE is required to prescribe regulations regarding the financial disclosure statement form and procedures for its filing. The bill also creates a new section within the Ethics in Government Law to require only appointed public officers who are entitled to receive compensation of more than \$6,000 each year to file financial disclosure statements with the NCOE.

The bill makes technical changes to clarify that counties with a registrar of voters are required to keep financial disclosure statements on file for 6 years after the date of filing, and that counties with a registrar of voters must provide candidates for public office with a copy of the financial disclosure statement form.

The bill defines and applies a ‘willfull’ standard to the failure to timely file a financial disclosure statement for the purposes of assessment of a civil penalty, and clarifies that willfully failing to file a statement also subjects a public officer or a candidate for public office to a civil penalty. The civil penalties for late filing of a financial disclosure statement are lowered as follows:

Prior to SB 147	As Amended by SB 147
1 – 7 days late = \$25 per day	No more than 10 days late = \$25
8 – 15 days late = \$175, plus \$50 per day	11 – 20 days late = \$50
16 + days late = \$575, plus \$100 per day	21 – 30 days late = \$100
	31 – 45 days late = \$250
	46 + days late = Deemed a non-filer, \$2,000

The bill removes the ability of the Commission to reduce civil penalties, but retains its ability to waive a civil penalty for good cause shown.

The bill became effective upon passage and approval (June 11, 2003), and is not applicable to conduct occurring before the effective date of the act.

Assembly Bill 529

Assembly Bill 529 becomes effective January 1, 2004.

The provisions of AB 529 which affect the ethics in government law are those which transfer responsibility to the Secretary of State to accept financial disclosure statement filings of elected public officers and candidates for public office, similar to the provisions of SB 147. The bill also lowers civil penalties assessed for late filing of financial disclosure statements.

Once the provisions of SB 147 and AB 529 are codified into the *Nevada Revised Statutes*, the enforcement authority for assessing civil penalties for late filing of financial disclosure statements will be conferred upon the Secretary of State as of January 1, 2004.

Senate Bill 16

Senate Bill 16 was effective May 21, 2003.

SB 16 amends NRS 241.0355 to specify that the provisions of NRS 281.501(4), relating to abstention from voting and a reduction in the quorum necessary to pass a matter, do not apply to members of elected public bodies for counties with more than 40,000 in population unless the member of the elected public body has been advised by the public body's legal counsel that abstention is required under NRS 281.501. The opinion by counsel must be in writing and set forth with specificity the factual circumstances and analysis leading to the conclusion.

Assembly Bill 539

Assembly Bill 539 was effective May 22, 2003.

AB 539 amends five sections of the Nevada Revised Statutes to clarify the legality of contracts between a local government public body and members of that public body if the following seven criteria are met:

- 1) The member discloses his pecuniary interest in the contract (NRS 281.501);
- 2) The contracting process is controlled by rules of open competitive bidding, if applicable (NRS 281.230 and 281.505);
- 3) The sources of supply are limited (NRS 281.230 and NRS 281.505);
- 4) The member has not taken part in developing the contract plans or specifications (NRS 281.230 and NRS 281.505);

- 5) The member will not be personally involved in the opening, considering, or accepting of offers (NRS 281.230 and NRS 281.505);
- 6) A two-thirds vote in the affirmative is made by the local government public body (NRS 281.555, NRS 245.075, and NRS 268.384); and
- 7) The public notice for the meeting specifically mentions that such a purchase or contract would be made (NRS 281.555, NRS 245.075, and NRS 268.384).

Assembly Bill 551

Assembly Bill 551 becomes effective July 1, 2003.

AB 551 provides for a local government cost-share of the NCOE budget. Presently, 65 percent of the agency's request for opinion caseload comes from city and county government; however, the agency is funded 100 percent by the state General Fund. AB 551 provides that cities and counties with more than 10,000 in population are required to proportionally share in funding the NCOE budget. The NCOE is responsible for billing cities and counties on August 1 and February 1 of each year of the biennium. If a city or county fails to pay the assessment, the NCOE Executive Director is authorized to submit a billing claim to the Department of Taxation, and the Department of Taxation is authorized to deduct the funds from that city or county's share of the Local Government Tax Distribution Account.

The NCOE is directed to consult with the Budget Division and the Legislative Counsel Bureau Fiscal Division to determine the local government cost share of the agency budget for each biennium. The cost share will be based on the source of the NCOE request for opinion caseload from the previous biennium. Funds collected from local governments will be deposited into the State General Fund for credit to the budget account of the NCOE. The funds collected from local government are restricted for the enforcement of the ethics in government law, and do not revert to the General Fund at the end of any fiscal year.

Senate Bill 123

Senate Bill 123 becomes effective October 1, 2003.

SB 123 adds a new section to the ethics in government law prohibiting public officers or employees from requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or a candidate. The bill sets forth criteria clarifying what expenditures are considered to be in support of a candidate, and specifies that the provisions of the law are applicable to a governmental entity when a current public officer of the governmental entity files a declaration of candidacy or an acceptance of candidacy and the provisions end on the date of the general election. The bill also provides limited exceptions to the prohibitions.